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BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Vincent Carmona, Tyrin Torres

Plaintiff,

-against-

THE CITY OF NEW YORK, PAULINA GONZALEZ (SHIELD NO. 19030), JOHN DOE 1-4

Defendants.

COMPLAINT

09 4551

Jury Trial Demanded

GLASSER, J.

J. ORENSTEIN, M.J.

PRELIMINARY STATEMENT

1. This is an action for money damages brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. §1983 for the Defendants' commissions of acts under color of law in violation of the Plaintiff's rights under Fourth, Sixth, and Fourteenth Amendment to the United States Constitution and Article I, Section 12 of the New York State Constitution and of common law of the State of New York. The case arises from an June 23, 2009 incident in which members of the New York City Police Department ("NYPD") subjected plaintiffs to false arrest, excessive force, assault and battery, an illegal strip search and fabricated evidence.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983, and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by the aforesaid statutes and 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because defendant City of New York is subject to personal jurisdiction in the Eastern District and the events in question occurred in the Eastern District.

PARTIES

4. Plaintiffs are residents of the State of New York, County of New York.

5. The City of New York is a municipal corporation organized under the laws of the State of New York.

6. The New York City Police department (the "NYPD") is the department of the City responsible for, among other functions, arresting persons for offenses and maintaining custody over such persons prior to their initial appearance in court. At all times relevant hereto, the NYPD, together with the City, was responsible for the policy, practice, supervision, implementation, and conduct of all NYPD matters and was responsible for the appointment, training, supervision, and conduct of all NYPD personnel. In addition, at all relevant times, defendant NYPD, together with the City, was responsible for enforcing the rules of the NYPD, and for ensuring that NYPD personnel obeyed the Constitutions and laws of the United States and of the State of New York.

7. Paulina Gonzalez is a member of the NYPD who violated plaintiff's rights as described herein. Gonzalez is sued in her individual and official capacity.

8. John Does are members of the NYPD who violated plaintiff's rights as described herein. Does are sued in their individual and official capacity.

STATEMENT OF FACTS

9. On June 23, 2009, at approximately 1:00 p.m., at 3485 Neptune Avenue in Brooklyn, New York, Police Officer Gonzalez and John Does arrested plaintiffs without cause and falsely charged them with Disorderly Conduct.

10. At all relevant times, plaintiffs were not involved in criminal activity. Plaintiffs were merely walking and talking when Police Officers came up to them and began searching them. The officers told plaintiffs they were looking for marijuana. Plaintiffs had no marijuana and objected to the search. Plaintiffs were then taken to 60th precinct for arrest processing.

11. While at the 60th precinct, plaintiffs were taken, individually, into the bathroom. While in the bathroom they were told to remove their clothes and squat down so that the officers could examine their orifices for hidden contraband. Plaintiffs complied.

12. At approximately 11:00 p.m., plaintiffs were taken to Brooklyn Central Booking.

12. While plaintiffs were in Central Booking, awaiting arraignment, one or more of the arresting officers met with a prosecutor employed by the Kings County District Attorney's Office.

13. The officer(s) misrepresented to the prosecutor that plaintiffs had committed disorderly conduct.

14. As a result of the aforesaid misrepresentation, charges were filed against plaintiffs.

15. On June 24, 2009, at approximately 6:00 p.m. plaintiffs received ACDs.

16. As a result of defendants' actions, plaintiff experienced physical injuries, emotional distress, fear, embarrassment, humiliation, discomfort, pain and suffering, loss of liberty, and damage to reputation.

FEDERAL AND STATE LAW CLAIMS AGAINST GONZALEZ AND JOHN DOES

17. Plaintiffs repeat and reallege the allegations contained in ¶¶ 1-16 as if fully set forth herein.

18. The conduct of Police Officer Gonzalez and John Does, as described herein, amounted to false arrest, excessive force, assault and battery, and fabricated evidence. This conduct violated plaintiffs' rights under 42 U.S.C. § 1983, the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution.

FEDERAL LAW CLAIMS AGAINST THE CITY OF NEW YORK

19. Plaintiffs repeat and reallege the allegations contained in ¶¶ 1-18 as if fully set forth herein. The City of New York directly caused the constitutional violations suffered by plaintiff.

20. Upon information and belief, the City of New York, at all relevant times herein, was aware from notices of claim, lawsuits, complaints filed with the NYPD and the Civilian Complaint Review Board, and from the NYPD's own observations, that the individual defendants are unfit, ill-tempered police officers who have the propensity to commit the acts alleged herein.

21. Nevertheless, the City of New York exercised deliberate indifference by failing to take remedial action. The City failed to properly train, retrain, supervise, discipline, and monitor the officers and improperly retained and utilized them. Moreover, the City of New York failed to adequately investigate prior complaints against the officers.

22. The aforesaid conduct by the City of New York violated plaintiff' rights under 42 U.S.C. § 1983 and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution.

WHEREFORE, plaintiffs demand a jury trial and the following relief jointly and severally against the defendants:

a. Compensatory damages in an amount to be determined by a jury;

b. Punitive damages in an amount to be determined by a jury;

c. Costs, interest and attorney's fees;

d. Such other and further relief as this Court may deem just and proper, including injunctive and declaratory relief.

DATED: October 21, 2009
New York, New York

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By:

ROBERT MARINELLI (RM-4242)